

FILED  
LODGED  
ENTERED  
RECEIVED

NOV 03 2009 LK

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
SEATTLE DIVISION

JOSEPH ANDREW HYLKEMA, a single  
man,

Plaintiff

v.

MERCHANTS CREDIT CORPORATION  
d/b/a MERCHANTS CREDIT  
ASSOCIATION, a Washington  
corporation; JANE DOE ADAMS and  
JOHN DOE ADAMS, individually  
and the marital community  
thereof,

Defendants

No.

**C09-1572**

COMPLAINT



09-CV-01572-CMP

COMES NOW the Plaintiff who, for causes of action set forth  
below, hereby sues defendants above-named (collectively referred  
to as "Defendant" herein) and for his complaint alleges the  
following:

**1. NATURE OF ACTION**

1.1. This is an action for damages for violations of the Fair  
Debt Collection Practices Act ("FDCPA"), 15 USC § 1692 et seq.  
Plaintiff brings this action in the capacity of a private

COMPLAINT - 1

JOSEPH ANDREW HYLKEMA  
477 PEACE PORTAL DRIVE #107-244  
BLAINE, WA 98230  
(206) 202-4530  
EMAIL: HYLKEMAJ@ISOMEDIA.COM

NO ISS. SBA 3017.1

1 attorney general to impose strict liability upon all defendants  
2 and each of them individually for their violations of the FDCPA.

3 **2. JURISDICTION AND VENUE**

4 2.1. Jurisdiction arises under 28 U.S.C. §§ 1331, 1337(a), and  
5 15 U.S.C. § 1692k(d). Venue is proper in this Court as  
6 Defendant transacts business here and the conduct complained of  
7 occurred here.

8 **3. PARTIES AND BACKGROUND**

9 3.1. Plaintiff is a *sui juris* adult who has been the subject of  
10 Defendant's debt collection activities that took place within  
11 this District and has been damaged thereby.

12 3.2. Defendant MERCHANTS CREDIT CORPORATION ("MCC") d/b/a  
13 MERCHANTS CREDIT ASSOCIATION, is a Washington corporation.  
14 MCC's offices and principal place of business are located at  
15 2245 152nd Avenue NE, Redmond, WA 98052. MCC is authorized to  
16 do business in the state of Washington through its registered  
17 agent, one David W. Quigley, located at that address.

18 3.3. Defendant Jane Doe ADAMS, sued herein in her individual  
19 capacity, is a *sui juris* adult and at all times relevant herein  
20 was an employee of defendant MCC. Defendant John Doe ADAMS is  
21 the spouse of defendant Jane Doe ADAMS and is sued herein in his  
22 community capacity.

23 3.4. Defendant MCC's principal business purpose is the  
24 collection of debts. Defendant MCC, and Defendant Jane Doe

1 ADAMS on its behalf, regularly attempts to collect debts  
2 asserted to be owed or due another using the telephone, mails  
3 and other instrumentalities of interstate commerce and did so  
4 attempt to collect the Alleged Indebtedness from Plaintiff.

5 3.5. Upon information and belief, "Mrs. Adams," the name used by  
6 Defendant Jane Doe ADAMS, is not her true name but is a  
7 pseudonym (in industry parlance, a "desk name") used while  
8 attempting to collect debts. Plaintiff therefore does not  
9 definitively know the true identities of the ADAMS Defendants at  
10 this time and they are therefore sued herein by such fictitious  
11 names. Plaintiff will ascertain the true identity of the ADAMS  
12 Defendants and will amend this Complaint to reflect the same.

13 3.6. All of Defendant Jane Doe ADAMS' conduct complained of  
14 herein was done on behalf of, and in furtherance of, the marital  
15 community formed by her and her spouse, Defendant John Doe  
16 ADAMS.

17 3.7. Defendant Jane Doe ADAMS was hired, trained, and supervised  
18 using MCC's methods, materials, and personnel. All of Defendant  
19 Jane Doe ADAMS' conduct complained of herein was done with MCC's  
20 full knowledge, consent, and support; was within the course and  
21 scope of her employment with MCC and was done in furtherance of  
22 MCC's business.

23 3.8. MCC is the assignee of Plaintiff's alleged obligations to  
24 pay money to non-parties for medical treatment (the "Alleged

1 Indebtedness"). The Alleged Indebtedness arose out of  
2 transactions primarily for personal, family or household  
3 purposes.

#### 4 4. STATEMENT OF FACTS

5 4.1. Defendant has attempted to collect the Alleged Indebtedness  
6 through a campaign of phone calls and voice mail messages.

7 4.2. Defendant's campaign began on November 24th, 2008. On that  
8 date at approximately 2:43 P.M., Defendant ADAMS left a message  
9 on Plaintiff's voice mail. A true and correct copy of said  
10 message accompanies this Complaint on a CD-ROM as Audio Exhibit  
11 1.

12 4.3. Defendant's message failed to provide reasonable disclosure  
13 of the caller's identity and failed to disclose that the call  
14 was from a debt collector.

15 4.4. On or about October 21st, 2009, Plaintiff called the number  
16 left by Defendant ADAMS and spoke with her. A true, correct and  
17 complete recording of said call accompanies this complaint on a  
18 CD-ROM as Audio Exhibit 2.

19 4.5. In the call, Defendant ADAMS made numerous statements and  
20 threats about the Alleged Indebtedness that were misleading and  
21 false and that would tend to mislead the least sophisticated  
22 consumer. More specifically, Defendant ADAMS, *inter alia*:

23 4.5.1. Referred to the Alleged Indebtedness as "legal claims  
24 being filed here in our office,"

1 4.5.2. Repeatedly threatened to sue Plaintiff by saying the  
2 Alleged Indebtedness was going to be an "involuntary collection  
3 item" if Plaintiff did not immediately pay the balance in full,  
4 because Plaintiff refused to answer her intrusive questions  
5 about his occupation and place of employment and falsely stated,  
6 "there might come a time that you have to appear in court and  
7 answer these questions under oath,"

8 4.5.3. Stated and/or implied that Plaintiff had a legal  
9 obligation to answer her questions, and

10 4.5.4. Threatened to have "our attorney handle this" to "file a  
11 lawsuit against you to secure the [Alleged Indebtedness]."

12 4.6. All of Defendant's threats were false. Defendant did not  
13 intend to take any of the threatened against Plaintiff because,  
14 *inter alia*, at the time the threats were made, Defendant did not  
15 have Plaintiff's true address for service of process, much less  
16 any information to suggest that Plaintiff had any wages that  
17 could be garnished or assets that could be seized.

18 4.7. Further, despite Defendant's statements to the contrary,  
19 Plaintiff was under no legal obligation to answer any of  
20 Defendant's questions or to cooperate in any way whatsoever.

21 4.8. Defendant's conduct herein was persistent, deliberate, and  
22 in bad faith.

23 4.9. As a direct and proximate result of Defendant's conduct  
24 herein, Plaintiff has suffered damages.

**5. FIRST CAUSE OF ACTION – VIOLATION OF 15 U.S.C. § 1692d(6)**

5.1. Defendant has placed telephone calls to Plaintiff without meaningful disclosure of the caller's identity as required. *See, inter alia, Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F.Supp.2d 1104, 1116 (C.D.Cal. 2005).

**6. SECOND CAUSE OF ACTION – VIOLATION OF 15 U.S.C. § 1692e(2)(A)**

6.1. Defendant's characterization of the Alleged Indebtedness as a "legal claim being filed here in our office" constituted a false statement of its character and/or legal status.

**7. THIRD CAUSE OF ACTION – VIOLATION OF 15 U.S.C. § 1692e(5)**

7.1. Defendant's threats to sue Plaintiff, when in fact such action could not legally be taken or was not intended to be taken, were attempts to collect the Alleged Indebtedness through false or misleading representations and means.

**8. FOURTH CAUSE OF ACTION – VIOLATION OF 15 U.S.C. § 1692e(10)**

8.1. Defendant has attempted to collect the Alleged Indebtedness and has attempted to obtain information concerning Plaintiff through repeated false, misleading or deceptive representations and means, including:

8.1.1. Failure to identify itself as a debt collector in its phone calls,

8.1.2. Placement of telephone calls without meaningful disclosure of the caller's identity,

8.1.3. Falsely threatening legal action that Defendant had no

1 intention of carrying out,

2 8.1.4. Falsely stating and/or implying that Plaintiff would or  
3 could be sued because he failed or refused to answer Defendant's  
4 questions, and

5 8.1.5. Falsely stating and/or implying that Plaintiff was under a  
6 legal obligation to answer Defendant's questions or to otherwise  
7 cooperate in any way with it.

8 **9. FIFTH CAUSE OF ACTION – VIOLATION OF 15 U.S.C. § 1692e(11)**

9 9.1. Defendant has failed to disclose that its phone calls were  
10 from a debt collector as required. *See, inter alia, Foti v. NCO*  
11 *Fin. Sys., Inc.*, 424 F. Supp. 2d 643, 669 (S.D.N.Y. 2006).

12 **10. NO BONA FIDE ERROR DEFENSE**

13 10.1. To the extent that any violations of the FDCPA complained  
14 of herein were not intentional, any such errors were errors of  
15 law that are not excused by the *bona fide* error defense.  
16 Further, Defendant failed to maintain procedures reasonably  
17 adapted to avoid such errors. *See Baker v. GC Services, Inc.*,  
18 677 F.2d 775, 779 (9<sup>th</sup> Cir. 1982). Thus, the 15 U.S.C. §  
19 1692k(d) *bona fide* error defense does not apply.

20 **11. PRAYER FOR RELIEF**

21 11.1. WHEREFORE, Plaintiff respectfully prays the Court enter  
22 judgment against Defendants, and each of them jointly and  
23 severally, as follows:

24 11.1.1. For the maximum statutory damages permitted under the

1 FDCPA,

2 11.1.2. For costs and fees of the suit, including reasonable  
3 attorney fees in the event that Plaintiff instructs counsel  
4 herein or to enforce any judgment entered herein in this or any  
5 foreign jurisdiction, and

6 11.1.3. For such other and further relief and the Court may deem  
7 just, proper and equitable.

8 DATED: November 3, 2009

9 S/ Joseph A. Hylkema  
10 JOSEPH ANDREW HYLKEMA  
11 WSBA: N/A  
12 Plaintiff pro se  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24